

SUMMARY ANALYSIS OF AMENDED BILL

Author: Núñez, et al. Analyst: Anne Mazur Bill Number: AB 8
May 17, 2007
July 3, 2007
 Related Bills: See Prior Analysis Telephone: 845-5404 Amended Date: July 18, 2007
 Attorney: Tommy Leung Sponsor: _____

SUBJECT: Require Employers To Establish Section 125, Cafeteria Plans

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

☒ AMENDMENTS IMPACT REVENUE. A new revenue discussion is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended May 1, 2007.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED May 1, 2007 STILL APPLIES.

OTHER – See comments below.

SUMMARY

This bill would do the following:

- Establish the California Health Care Reform and Cost Control Act.
- Create the California Cooperative Health Insurance Purchasing Program (Cal-CHIPP) to serve as a health care purchasing pool for employers and make other changes to health care-related provisions of several California Codes.
- Require employers to elect either to make health care expenditures of a specified amount or to pay an equivalent amount to a specified fund.
- Require employers to set up a cafeteria plan under Internal Revenue Code (IRC) section 125 (125 mandate).

Discussion in this analysis is limited to those provisions of the bill that affect the Franchise Tax Board (FTB).

Board Position:

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Legislative Director

Date

Brian Putler

8/31/07

SUMMARY OF AMENDMENTS

The May 17, 2007, amendments added a minimum rate equal to 7.5% of social security wages that, at the election of each employer, except as provided, would be required to be paid for health care expenditures for the employer's employees or paid to the California Health Trust Fund. The amendments also made substantive and technical changes to provisions that would not impact the department.

The July 3, 2007, amendments added co-authors and made substantive changes and nonsubstantive technical changes to health care-related provisions that would not impact the department. These amendments merged SB 48 (Perata, 2007/2008) into this bill.

The July 18, 2007, amendments made substantive changes and nonsubstantive technical changes to health care-related provisions that would not impact the department.

Because these amendments impact revenue, a revised Economic Impact section is provided below. Revised This Bill and Fiscal Impact sections are also provided. The remainder of the analysis of the bill as amended May 1, 2007, continues to apply. For convenience, the Implementation Considerations and Technical Considerations sections of the May 1, 2007, analysis are provided below.

POSITION

Pending.

THIS BILL

This bill would require employers to elect, for full-time and part-time employees, to either make health care expenditures in an amount equal to at least 7.5% of social security wages or to pay the same amount into the California Health Trust Fund (Fund). Employees and their dependents, if applicable, of employers that elect to pay into the Fund would be required to enroll in Cal-CHIPP for their health care coverage. Cal-CHIPP, which would be established by this bill, would serve as a health care purchasing pool for eligible employees. The bill provides certain exceptions for such employees, essentially those who otherwise have health care coverage. Employers' payments made in lieu of health care expenditures would be collected and administered by the Employment Development Department (EDD) for deposit into the Fund. Employers would be permitted to pay all or a portion of an employee's share of premiums.

This bill would also require employers in this state to adopt and maintain a cafeteria plan pursuant to IRC section 125 for the purpose of allowing employees to pay for health insurance premiums.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill provides "Unless federal law or the law of this state provides otherwise, each employer in this state..." must adopt and maintain a cafeteria plan. It is not clear what certain terms in the preceding phrase are intended to mean. Presumably, the limitations with respect to "federal law" are intended to reflect that California cannot enact laws to compel action by the federal government, unless the federal government has a law to require such action. In this case, California could not compel a federal employer to adopt and maintain a cafeteria plan for its employees. The same problem would probably exist for a federally recognized Indian Tribe. The phrase "employer in this state" also lacks clarity. Another provision of the bill (on page 67, beginning on line 38, of the July 18, 2007, version) defines "employer" for purposes of that section—relating to employers that may elect to pay into the Fund in lieu of making health care expenditures. The author may wish to consider referencing that same definition for purposes of the 125 mandate.

Although the bill would place the 125 mandate language in a part of the Revenue and Taxation Code administered by FTB, it is unclear which state department would be responsible for enforcing this mandate. Generally, EDD administers employer-related laws and has an existing reporting and enforcement relationship with businesses in the businesses' capacity as employers.

The bill would not provide a consequence for failure to comply with the mandate. The author may wish to consider an appropriate enforcement tool to encourage compliance with the mandate.

TECHNICAL CONSIDERATIONS

Because the 125 mandate in this bill would place a requirement on employers to provide a mechanism for employees to purchase health care benefits with pre-tax dollars, this provision might more appropriately reside in another code, such as the Labor Code, where it would have statutory proximity to the employer election.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until implementation concerns are fully identified and resolved, but could be significant depending on whether and to what extent FTB would be responsible for administering and enforcing the 125 mandate. According to the author's staff, EDD would be responsible for administering and enforcing the 125 mandate. In that case, this bill would not significantly impact the department's costs. Department staff recommends that the bill be amended to: (1) clearly authorize EDD as the department responsible for administering and enforcing the 125 mandate, and (2) relocate the mandate to a more appropriate Code, such as the Labor Code, where it could have proximity with the employer election.

ECONOMIC IMPACT

This bill would cause an increase in the number of employees making contributions to their health insurance premiums through section 125 plans. It would also impose fees on employers. These fees would be treated as deductible expenses and, thus, would result in a tax decrease for affected employers. The amount of income tax reduction resulting from increased section 125 use and employer fees would depend on the estimated behavioral responses to the provisions of this bill. These income tax reductions are secondary impacts compared to the health expenditure and primary revenue raising (employer fees) impacts of these bills. To date, department staff has been unable to determine the behavioral responses that were estimated to occur under the provisions of this bill. As such, and because the impacts that department staff would be estimating are secondary, a revenue estimate will not be produced for this bill.

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